

RESPIRATORY CARE BOARD OF CALIFORNIA
Department of Consumer Affairs
California Code of Regulations. Title 16. Division 13.6. Respiratory Care Board
Fees

INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Regulation: Biennial Renewal, Delinquent, and Inactive Fee Increases

Sections Affected: Section 1399.395 of Division 13.6, Title 16 of the California Code of Regulations (CCR).

Specific Purpose of the Proposed Changes

The Respiratory Care Board of California (Board) proposes to amend section 1399.395 of Division 13.6 of Title 16 of the CCR. The purpose for amending the regulation is to allow the Board to raise fees to address structural imbalances in the Board's fund.

Business and Professions Code (B & PC) section 3722 authorizes the Board to adopt regulations, including amending rules and regulations as necessary, to effectuate the administration of Division 2, Chapter 8.3 of the B & PC (commencing with section 3700).

B & PC section 3775 authorizes the Board to increase the renewal fee by regulation, and establishes the statutory maximum fee for biennial license renewal, as well as other fees for the Board's respiratory care practitioner licensees. Additionally, B & PC section 3775 establishes the criteria to determine the delinquency fees for licenses that are not renewed prior to their expiration date.

In this proposed rulemaking, the Board seeks to amend Title 16 of the CCR, section 1399.395 to increase its renewal, delinquent, and inactive fees as detailed below.

FEE	EXISTING	PROPOSED 7/1/18	PROPOSED 7/1/19	PROPOSED 7/1/20
Biennial Renewal Fee	\$250	\$275	\$300	\$330
Delinquent Fee	\$250	\$275	\$300	\$330
Delinquent Fee > 2 years	\$500	\$550	\$600	\$660
Inactive License Fee	\$250	\$275	\$300	\$330

The proposed fee increases intend to address the Board's structural imbalance and will protect the Respiratory Care Board Fund (Fund) from becoming insolvent as projected in FY 18/19. Analysis of the Board's fund balance measured by months in reserve projects that at the end of the current fiscal year 2017/18, a 0.8-month reserve will exist. However, the reserve is projected to steadily decline in the following fiscal years to the point where there will be a -2.2-month deficit at the conclusion of FY 2018/19, and a -5.3-month deficit at the conclusion of FY 2019/20. Correcting the Board's structural imbalance is vital to the Board's solvency and will be unattainable without renewal fee increases.

Impact to Renewal

The proposed fee increase will equate to \$25 during FY 18/19, \$25 during FY 19/20, and \$30 during FY 20/21 for those renewing as active or inactive licensed respiratory care practitioners.

Impact to Delinquent Fees

Pursuant to B & PC section 3775, and in response to the implementation of the proposed renewal fee increase, the delinquency fees imposed on practitioners who fail to timely renew their license prior to expiration will also increase. Upon expiration, if renewed not more than two years from the date of expiration, a delinquency fee shall be 100 percent of the renewal fee in effect at the time of renewal. However, if the license is renewed after two years, but not more than three years from the date of the expiration of the license, the delinquency fee shall be 200 percent of the renewal fee in effect at the time of renewal. Depending on when the renewal is paid by the practitioner, the increase to the delinquent fee will range from \$25 to \$50 during FY 18/19 and FY 19/20, and \$30 to \$60 during FY 20/21.

Problem Being Addressed

The Fund balance provides specific information on the Board's current fund condition, as well as projections for future years. There are several factors that have contributed to the Fund's imbalance, including the BreEZe system, staff salaries and benefits, pro rata, and enforcement expenses. In addition, the renewal and delinquent fees remained unchanged from 2002 - 2017, while the Consumer Price Index increased over the years. The rate of inflation is calculated at 30.75 percent since 2002 and 58.00 percent since 1991 (See, The Bureau of Labor Statistics' Consumer Price Index Detailed Report Data for December 2015 – Table 24).

Further, a review of the Board's Fund condition report demonstrates that while the overall revenue for the Board has increased by 43 percent between FY 2002/03 and FY 2015/16, Board expenditures have increased by 80 percent during the same time period.

The increase in revenue correlates directly to the increase in the number of applications received. In FY 02/03 the Board received 680 applications and had 15,202 licenses active. At its height in FY 12/13, the Board collected 1655 new applications and had 21,473 active licensees. Since that time, the number of new applications has dropped to 1158 in FY 16/17 with 23,473 active licensees. The number of new applications accounts for the increase in revenue over the last 15 years because these figures are tied to new application fees, initial licensure fees, and renewal fees.

The increase in expenditures over the last 16 years is tied to employee salaries and benefits, pro rata, and enforcement costs as follows:

- Salaries and Benefits: In 2002, the Board had 23 PYs with 22 positions staffed. Currently, the Board has 17.4 PYs and 18 positions staffed. Even though the Board was able to reduce its staffing due to reengineered processes, costs have increased. Expenditures in FY 02/03 for salaries and benefits was \$1,086,000 whereas expenditures in FY 16/17 were \$1,693,106 (56% increase).

- Pro Rata: In FY 02/03 the Board was charged \$403,000 in statewide and departmental Pro Rata and in FY 16/17, the Board was charged \$804,000 (a 99% increase). Increases are attributed to general salary increases and benefit costs as well as costs for BreEZe. The Board does not control the amount or rates of Pro Rata expenses levied upon it by the State and the DCA for required services or availability of services.

- Attorney General Expenses: In FY 02/03, the Attorney General expenses charged to the Board were \$246,000. In FY 16/17, the Board was charged \$455,000 (an 85% increase). While the number can fluctuate each year, there have been significantly fewer cases sent to the AG each year for processing since FY 02/03 from an average of 112 to 70 as result of greater efficiencies achieved in-house. The Board monitors costs for each case closely and brings excessive costs to the attention of the Senior Attorney General, which in many cases has resulted in a credit. But beyond this, the Board has little control on how many hours the AG charges or their hourly rates. Though increases in salaries and benefits contribute to the additional expenses, it should be noted that the Board submitted a negative BCP in FY 03/04, reducing its budget allotment for the AG by \$132,000 as a means to keep costs in check.

Evidence and Witnesses – Costs associated with expert witnesses, court reporting fees, or other court fees has climbed from \$25,000 in FY 02/03 to \$34,000 in FY 16/17 (a 37% increase). This increase is attributed to the shift in enforcement cases the Board is seeing that require expert review.

All of the aforementioned expenditures have shown a steady increase each year for four years or greater.

Other costs that have contributed to additional expenditures in the last three years include a one-time cost of \$160,000 for a workforce study, and investigative and administrative hearing costs. In FY 15/16 the costs for investigation and administrative hearing costs were abnormally high. For example, for the last three fiscal years, the Division of Investigation (DOI) has charged the Board \$0, \$0 and \$79,000. This number will fluctuate depending on whether the Board sends any cases to DOI. The Office of Administrative Hearings charged the Board \$62,000 in FY 16/17, but charged \$90,000 the preceding year. This figure will fluctuate greatly as well depending on how many enforcement cases go to hearing. Expenses for postage and travel also increased \$3,000 and \$6,000 since FY 02/03.

Notwithstanding the increases in expenditures, the Board has taken a number of measures to increase efficiencies while reducing expenditures over the years including:

In 2001, the Board secured additional legislative authority that provided staff greater access and authority to retrieve records as part of an investigation. This legislative amendment increased the number of records that were provided to the Board, without the use of a subpoena as part of an investigation. At that time the Board was pursuing, but did not yet have, the authority to issue an investigative subpoena. Nearly all investigations are now being performed in-house, which resulted in significant cost savings and faster turn-around times. Only a small number of cases, usually those requiring a subpoena, were referred to DOI. Currently, only cases where a viable threat may be posed are forwarded to DOI.

In 2002, the Board established “In-House Review and Penalty Determination” guidelines to address a large majority of the types of complaints received. The guidelines help provide consistency in the discipline imposed and prioritize the cases that should be referred to the Office of the Attorney General for formal discipline.

In 2002, and in concert with the establishment of the In-House Review and Penalty Determination guidelines, the Board expanded its citation and fine program to provide an alternative “penalty” to formal discipline for various violations. A citation allows the Board to establish a public record for consumer and employer awareness, as well as for use if any future violations were to occur. This measure provided greater efficiency and ensured the availability of funds to prosecute high priority complaints.

In 2003, the Board contracted for services to perform random drug screenings for licensees placed on probation who are subject to abstention and testing. Since implementation of this contract, each probationer subject to biological fluid testing is required to check-in directly with the contracted vendor on a daily basis to determine if he or she has been selected to provide a specimen. If selected, the probationer visits a collection site approved by the drug testing contractor by 11:59 p.m. on the day selected. As a result, drug tests are performed more often and an increase in positive drug tests has resulted. Productivity has significantly increased as probation monitors are no longer required to travel to perform regular specimen collection resulting in substantial ongoing savings in staff and travel expenditures, and allowing for the probation monitors to proactively focus on monitoring other areas of probation compliance.

In 2003, the Board established its own cost recovery database with regular monthly invoices. In nearly every disciplinary decision, the Board orders respondents to repay the Board for its actual costs. In those cases where the Board revokes or accepts surrender of licenses, respondents rarely make an effort to repay the Board. In other cases where the Board disciplines the licenses but the license remains valid, some respondents delay payment. Until 2003, the Board had tracked payments manually and never invoiced respondents. In 2003, Board staff created a database for automated monthly invoicing and tracking. The effort was successful in increasing the collection of outstanding costs, as well as providing for greater efficiency and record management. The Board later used the database to collect outstanding fines as well.

In 2003, the Board sought and gained legislative authority to release personal information such as birth date and social security number for the purposes of contracting with a collection agency. In 2004, the Board implemented its contract with a collection agency to collect outstanding cost recovery/fines. The Board has recouped over \$210,000 since then. This is significant when added to the Board's internal recovery efforts, and that of the Intercept Program administered by the Franchise Tax Board.

In 2009, the Board obtained a delegation of investigative subpoena authority from the director of the Department of Consumer Affairs by completing the requisite training. Since that time, the Board has only referred anywhere from 0 to 5 cases to DOI each year, rather than an average of 46 cases per year that require investigative subpoenas, lending to additional savings.

In 2010, the Governor issued several Executive Orders placing budgetary restrictions on the Board and other state agencies; at the same time, the Board was an integral part of developing the Consumer Protection Enforcement Initiative (CPEI) and focused on increasing efficiencies with the overriding goal to complete the entire enforcement process for a licensee in less than 18 months. Again, the Board reengineered its processes and shifted duties to ensure its highest priority of consumer protection. To address enforcement workload, the Board reevaluated the strengths of existing staff and reassigned duties accordingly. It also provided some staff with additional training. The Board altered its outreach campaign significantly, reducing it to a website and mailings. It redirected resources that were slated for staff visits to high schools and colleges to the Enforcement Program instead.

In December 2009, SB 1441 (Chapter 548, Statutes of 2008) required implementation of uniform standards to provide some consistency among healing arts boards and their methods for addressing substance using/abusing licensees. The Board completed the implementation of these standards in June 2012 with no additional staffing. As a result, the Board increased testing of probationers from 16 times per year to as much as 52 times per year and strengthened several other probation monitoring techniques.

In 2010, the Board expanded its background checks to include an additional national database search on applicants. In addition, the Board implemented an automated process established by DCA to automate fingerprint background reports, thereby reducing application processing times.

Since the launch of the BreEZe system in October 2013, the Board has reduced its overall average application processing time from 49 days in FY 2013/14 to 27 days in FY 2016/17. This is due to system functionality which provides management the ability to closely monitor stages of the application process, including any areas of delay which can then be promptly addressed. The license subscription feature within BreEZe has also led to a reduction in the number of inquiries related to license verification checks. In turn, the Board has now been able to redirect staff resources toward meeting continuing education (CE) audit and record retention targets.

Anticipated benefits from this regulatory action:

The proposed fee increases address the Board's structural imbalance and is aimed at protecting the Fund from becoming insolvent. This proposal is designed to enable the Board to maintain its licensing, disciplinary, and oversight operations to protect California's consumers, while also ensuring any projected surpluses are within the reserve limits permitted by B & PC section 3775.

Factual Basis/Rationale

Currently, B & PC section 3775 provides a statutory ceiling of \$330 for license renewal. Prior to increasing its renewal, delinquent and inactive fees in July 2017 from \$230 to \$250, a fee increase had not occurred since 2002. The demonstrated increase in costs is a fraction of the 30.75 percent inflation on the United States dollar since 2002 and 58.00 percent inflation since 1994.

The Board's current fund condition shows the Board's fund balance as measured in months in reserve, will steadily decline to the point where there will be a -2.2-month deficit by the end of FY 2018/19, and a -5.3-month deficit at the conclusion of FY 2019/20. Therefore, the Board proposes to increase fees to preserve its fiscal solvency.

Documents Relied Upon

As identified above, the increase in fees is based on the following materials, including the Consideration to Amend Section 1399.395 of Division 13.6 of Title 16 of the California Code of Regulations to Increase Fees (Item 2) which was presented for the Board's consideration during the June 30, 2017 Board meeting, and RCB's BreEZe Project Costs (Item 3) noted below, which was presented for the Board's consideration during the October 7, 2016 Board meeting:

1. Consumer Price Index – Table 24 (December 2015)
2. Consideration to Amend Section 1399.395 of Division 13.6 of Title 16 of the California Code of Regulations to Increase Fees
3. RCB's BreEZe Project Costs – 2011/12 through 2022/23
4. RCB Historical Expenditures

Business Impact

The proposed amendments to section 1399.395 will not have a significant adverse economic impact on businesses as the fee increases only impact individual respiratory care practitioners (RCPs).

Economic Impact Assessment

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because the step renewal fee increase will range from \$25 - \$30 biennially and is anticipated to have a minimal

impact on businesses. Respiratory care practitioners are mandated to work under the supervision of a medical director, in accordance with the prescription of a licensed physician. The Board does not anticipate the fee increase will have any impact on current business practices or licensing trends that would necessitate the creation or elimination of jobs.

- It will not create new business or eliminate existing businesses within the State of California because the step renewal fee increase will range from \$25 to \$30 biennially and is anticipated to have minimal impact on businesses. The Board does not anticipate the fee increase will have any impact on current business practices or licensing trends, including the loss of any jobs, that would result in the creation or elimination of businesses.
- It will not result in expansion of any businesses currently doing business within the State of California because the step renewal fee increase will range from \$25 to \$30 biennially and is anticipated to have minimal impact on businesses. The Board does not anticipate the fee increases will impact the expansion of businesses, as licensed respiratory care practitioners are mandated to work under the supervision of a medical director, and in accordance with the prescription of a licensed physician.
- This regulatory proposal will benefit the health and welfare of California residents because this proposal ensures the Board will remain fiscally solvent to administer and enforce the provisions of the Respiratory Care Practice Act, in the interests of consumer protection.
- This regulatory proposal does not affect worker safety because this proposal is specific to fee increases and it is not anticipated to impact current business practices or registration trends affecting worker safety.
- This regulatory proposal does not affect the state's environmental safety because it is specific to an increase in fees and is not anticipated to impact current business practices that may affect the state's environment.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

The Board is restricted by subdivision (d), section 3775 of the Business and Professions Code to increasing its renewal fee by no more than 10 percent of the fee charged in the preceding year. The Board currently charges \$250, so the most the Board can increase its current fee is \$25 to \$275 in FY 18/19, which by itself is insufficient to stabilize the Board's Fund. Accordingly, the Board has chosen to increase its renewal fee by another \$25 in FY19/20 to establish an even \$300 amount, and a final step increase of \$30 in FY 20/21 to remain fiscally solvent and to move toward meeting the additional provision within section 3775 of the Business and Profession Code which also requires the Board to increase its renewal fee so that it has a six-month reserve.

Keeping fees at the current levels would prevent the Board from fulfilling its consumer protection mandate because it would no longer have the available funds to perform many of the services required by law by the end of FY 19/20.